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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,704	05/08/2007	Bruce William Ross	207,697	8800
38137 7590 10/01/2008 ABELMAN, FRAYNE & SCHWAB 666 THIRD AVENUE, 10TH FLOOR NEW YORK, NY 10017				
EXAMINER				
ROLAND, DANIEL F				
ART UNIT		PAPER NUMBER		
3764				
MAIL DATE		DELIVERY MODE		
10/01/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/589,704

**Applicant(s)**

ROSS, BRUCE WILLIAM

**Examiner**

DANIEL F. ROLAND

**Art Unit**

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 July 2008.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.  
4a) Of the above claim(s) 10-11 and 13-16 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-4, 7-9 and 12 is/are rejected.  
7) ☒ Claim(s) 5 and 6 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 16 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 8/17/2006  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This is the initial Office Action based on the merits of Application 10/589,704 filed August 16, 2006. Claims 1-16, as originally filed, are currently pending and have been considered below.

#### ***Election/Restrictions***

1. The election made **without** traverse of claims 1-9 and 12 in the reply filed on 7/15/2008 is acknowledged. Claims 10-11 and 13-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

#### ***Claim Objections***

2. Claim 1 is objected to because of the following informalities: i) there should be a period “.” at the end of claim 1; and ii) the phrase “the quadrant arm” in claim 4 lacks antecedent basis. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 3-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 5 recites the limitation "the same axis" in line 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(c) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-4 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Fuller (US Patent 5,637,063).

Fuller discloses an apparatus comprising:

Regarding claim 1, a main frame (11) having a base, a front portion and a back portion having an upright portion (15, 17) spaced from the front portion, a moveable carriage (31) slidable with respect to the front portion of the main frame, a cable (52) connected by one of its ends to the carriage and extending from the front portion to the upright portion, and a weight (22) pivotally mounted on the upright portion connected to the other end of the cable and positioned above the base of the main frame rearward of the front portion, the arrangement being such that a driving force on the carriage causes the weight to rise thereby providing resistance to the drive force on the carriage.

Regarding claim 2, the apparatus according to claim 1, wherein the upright portion consists of a pair of spaced apart front posts (17) and a pair of spaced apart rear posts (15) and wherein the weight is pivotally mounted (18) at or adjacent to the upper end of the front posts.

Regarding claim 3, the apparatus according to claim 2, wherein a quadrant (18, 22) is pivotally mounted at or adjacent the upper end of the front posts about the same axis as the weight.

Regarding claim 4, wherein the weight (25) is connected to the quadrant arm.

Regarding claim 12, the apparatus according to claim 1, wherein the weight (25) is pivotally mounted at or adjacent to an upper part of the upright portion.

8. Claims 1 and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Ott (US Patent 6,824,504).

Ott discloses an apparatus comprising:

Regarding claim 1, a main frame (42) having a base, a front portion and a back portion having an upright portion (38) spaced from the front portion, a moveable carriage (13) slidable with respect to the front portion of the main frame, a cable (23) connected by one of its ends to the carriage and extending from the front portion to the upright portion, and a weight (22) pivotally mounted on the upright portion connected to the other end of the cable and positioned above the base of the main frame rearward of the front portion, the arrangement being such that a driving force on the carriage causes the weight to rise thereby providing resistance to the drive force on the carriage. Examiner notes that the weights can pivot around the non-numbered rod.

Regarding claim 7, the apparatus according to claim 1, wherein the carriage consists of a pair of spaced apart slide members (13) adapted to move along horizontal rails (20).

Regarding claim 8, the apparatus according to claim 7, wherein each slide member has a pair of upper wheels and a lower wheel (Fig 3, 16, 18) which engage the upper and lower faces of the respective rails.

Regarding claim 9, the apparatus according to claim 1, wherein the carriage is slidable in a generally horizontal plane (Fig 3).

9. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Andrews (US Patent 7,393,310).

Andrews discloses an apparatus comprising:

Regarding claim 1, a main frame (12) having a base, a front portion and a back portion having an upright portion (122) spaced from the front portion, a moveable carriage (182) slidable with respect to the front portion of the main frame, a cable (24) connected by one of its ends to the carriage and extending from the front portion to the upright portion, and a weight (32) pivotally mounted on the upright portion connected to the other end of the cable and positioned above the base of the main frame rearward of the front portion, the arrangement being such that a driving force on the carriage causes the weight to rise thereby providing resistance to the drive force on the carriage. Examiner is giving the broadest reasonable interpretation to the word rise, and thus, Andrews meets the limitation of a weight that rises.

*Allowable Subject Matter*

10. Claims 5-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

11. The prior art made of record is considered pertinent to applicant's disclosure. Please see from PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL F. ROLAND whose telephone number is (571)270-5029. The examiner can normally be reached on Monday - Friday (7:30-5:00) Alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on (571) 272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/D. F. R./  
Examiner, Art Unit 3764

/LoAn H. Thanh/  
Supervisory Patent Examiner, Art Unit 3764